

Claimant appealed and contends his present low-back complaints are the result of the April 28, 1999, work-related accident. Claimant argues he had the low-back symptoms since the April 28, 1999, work-related accident. But because of the severity of his neck and upper-back injuries, claimant did not seek medical treatment for his low-back complaints until his neck and upper-back injuries were successfully treated.

Conversely, respondent and its insurance carrier request that the Appeals Board affirm the Administrative Law Judge's preliminary hearing Order. Respondent argues claimant failed to present evidence to prove that his current low-back complaints are also the result of the April 28, 1999, work-related accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Appeals Board concludes that the Administrative Law Judge's preliminary hearing Order should be affirmed.

The question of whether claimant's current need for medical treatment for his low-back condition is related to the April 28, 1999, work-related accident is jurisdictional and subject to Appeals Board review. The issue is, in part, whether claimant's injury arose out of and in the course of employment.¹

Claimant injured his neck and upper back on April 28, 1999, when a large pipe fell on top of his hardhat while working as a millwright for the respondent. At the time of the accident, claimant was working for the respondent in Alton, Illinois. Respondent first provided medical treatment for claimant in Alton, Illinois. Claimant then returned home and medical treatment was provided through neurosurgeon Paul S. Stein, M.D., of Wichita, Kansas.

On October 21, 1999, Dr. Stein performed an anterior discectomy at C5-6 and C6-7, harvested bone grafts, and completed an interbody fusion of C5-6 and C6-7. At the time of the preliminary hearing, claimant remained under Dr. Stein's care but had been released to return to work with restrictions.

Medical treatment records from claimant's initial treatment in Alton, Illinois, and from Dr. Stein were admitted into the preliminary hearing record. Those records do not indicate that claimant made any low-back complaints until after his cervical spine surgery. Claimant, however, did give a history to Bruce Vest, Jr., M.D., in Alton, Illinois, that he had low-back problems in the past.

The first time claimant mentioned low-back complaints is in Dr. Stein's November 24, 1999, medical note. That medical note states, "He says that now that the severe upper back and neck pain has improved considerably he is noticing lower back pain more." As result of those complaints, Dr. Stein had claimant undergone an MRI examination of the lumbar spine. Dr. Stein found the MRI examination showed claimant with mild to moderate disk protrusion at L4-5, but no clear cut nerve root compression. He prescribed an epidural steroid injection. But respondent's insurance carrier did not

¹See K.S.A. 1999 Supp. 44-534a(a)(2).

authorize the injection or any other further treatment for claimant's alleged low-back condition.

The medical records presented at the preliminary hearing do not indicate that claimant made any contemporaneous low-back complaints after the April 28, 1999, work-related accident. Additionally, the medical records do not specifically address the question of whether claimant's present low-back condition is related to the April 28, 1999, work-related accident. Considering the record compiled to date, the Appeals Board agrees with the Administrative Law Judge that claimant has failed to prove that his present low-back condition and his need for medical treatment for that condition are related to the April 28, 1999, work-related accident.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding, but subject to future modification.²

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's April 11, 2000, preliminary hearing Order should be, and it is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 2000.

BOARD MEMBER

c: Chris A. Clements, Topeka, KS
Vincent A. Burnett, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director

²See K.S.A. 1999 Supp. 44-534a(a)(2).